IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6581 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ARUNKUMAR SUVARNA

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 6581 of 1991

MR NR SHAHANI for Petitioners

NOTICE SERVED for Respondent No. 1

MR RAJNI H MEHTA for Respondent No. 2 and 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 25/07/2002

ORAL JUDGEMENT

1. By means of this petition, the petitioners have prayed for declaring that the omission to refer all the three demands contained in Annexure-B is violative of Article 14 absolutely irrational, beyond the scope of

Section 10 of the Industrial Disputes Act and is violation of Section 12 (5) of the said Act and is therefore null and void and also for directing the first respondent to refer all the demands contained in Annexure-B within a fortnight, to the same Tribunal.

2. Prior to filing of the present petition, the petitioners had filed Spl. C.A. No. 1199 of 1990 for declaring that the petitioners are regular employees of the respondent Commission and they are entitled to be treated as such from the first date of their joining services and for further direction to the respondents no. 1 and 2 to pay arrears of wages of the petitioners and to give the seniority based on the above for treating the petitioners as direct employees of the respondent Corporation throughout, alternatively, directing the respondent no. 3 to take action against the respondents no. 1 and 2 for not ensuring compliance of Clause 5 of Form No. VI under Rule 25 (1) of the Contract Labour Central Rules, 1971. This Court directed that the ad-interim relief to continue in operation for two months from the date of the order. Mr. Shahani learned advocate for the petitioners sought permission to withdraw the petitioner and permission was granted and accordingly the petition was disposed of as withdrawn subject to continuation of ad-interim relief as stated above vide order dated 14-6-1990. Mr. Shahani learned counsel for the petitioners stated that the petitioners will raise demand with regard to regularization and eminent termination of their services to the Central Government by making a Reference to the competent Labour Court/Industrial Court/Tribunal in regard to such demand. For that purpose, the petitioners have to move the competent Labour Court/Tribunal for getting appropriate interim relief which was granted by this Court in the petition to continue for a period of two months. In view of the statement made by Mr. Naik, learned counsel for the petitioner sought permission to withdraw the petition. Accordingly, that petition was disposed of as withdrawn.

3. The petitioners made demands which are as under :

(i) All six of the petitioners should be declared as regularly appointed and to pay all arrears of wages, money equivalent of other benefits etc. as per the following details.

Name	Job Description	Date of joining

1. A.K. Suvarna Computer Operator Jan.1988
2. Mahendrasingh Data Entry Operator May 1989
3. Austin Sirvatham Computer Programmer May 1988
4. Kadri P. Rao Computer Programmer Aug.1987
5. Prabhatchandra Data Entry Operator April 18
   1989
6. Rajendra H. Rana Data Entry Operator Feb.1989

(ii) That all the applicants be paid money equivalent to their monthly wages as over time for the extra work performed by them throughout the period mentioned above in demand no. 1.

(iii) The apprehended action of the employer in seeking to terminating the services of the applicants herein, is illegal, unjust, improper, vitiated by malafides, based on extraneous consideration absolutely arbitrary and unfair labour practices under Schedule V of the Industrial Disputes Act and is also in contravention of Section 25P of the Industrial Disputes Act and is therefore, illegal, null and void, and therefore, the employer should be directed to pay complete wages till all the applicants are reinstated as regular employees in the Commission. These demands were raised by the petitioners before the Regional Commissioner of Labour (Central) Shram Bhvan Building, Khanpur, Ahmedabad vide letter dated 2-5-1990. The matter was referred to the Conciliation Officer and the Conciliation Officer in the proceedings called the parties for joint discussion on 9-7-1990. The petitioners were represented by Arunkumar Suvarna i.e. the petitioner no. 1 that the workman in the dispute were earlier working directly under the Production Engineer (Production) ONGC, Ankleshwar Project and thereafter made to work through contractor and then again engaged as direct employees and were again presently working as direct employees on monthly rated basis. The Management requested for time to examine the claim of the workmen and the matter was again considered on 23-7-1990. Thereafter, the matter could not be resolved and hence he submitted the report to the Assistant Labour Commissioner-II (C), Ahmedabad vide order dated 30-7-1990 recorded on 12-7-1990. Both the parties had divergent views and hence no settlement could be made in the proceedings but the management representative did not agree on the plea that there is no case. The matter was sent to the Government for making a Reference vide letter dated 5-10-1990. The Central Government exercising the powers by Clause (B) of Section 1 and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the said disputes for

adjudication to the Industrial Tribunal, Vadodara and directed it to give its award within a period of six months. The following questions were referred for adjudication.

(i) Whether the action of the management of ONGC Ankaleshwar is not regularizing and terminating the services of Shri Arun Kumar Survarna and five others, Data Entry Operators is justified, if, not, to what relief the said workmen are entitled"

4. The following are the contention of the learned counsel for the petitioner.

A. The petitioners made three demands but the Central Government have come a conclusion that there was an industrial dispute and it was desirable to refer to the said dispute for adjudication vide letter dated 5-10-1990. The Central Government has no power to curtail or modify the demand or any part of the demand related to the same under Section 10 (1) (d) of the Industrial Disputes Act, 1947.

B. Making of demand or misusing demand, it cannot be used in such a way that any part of the industrial dispute in existence, is not referred.

C. After reading sections 10 and 12 of the I.D. Act, together the omission to refer or not to refer any part of the demands or any of the demands is failure to exercise of powers . In other words, it is violative of Sections 10 and 12 of the I.D. Act.

5. Mr. Rajni Mehta, learned counsel for the respondents no. 2 and 3 pointed out that the disputes referred to the Industrial Court have been adjudicated upon by the Industrial Tribunal (Central) Vadodara, Gujarat in Reference (ITC) No. 4 of 1999, vide judgment and award dated 9-12-1999 holding that the actions of the ONGC, Ankleshwar in terminating the services of all the concerned workmen are held to be illegal and void and all the concerned workmen are entitled for reinstatement as a

permanent and regular employees of the ONGC with full back wages w.e.f. their respective date of termination with all consequential benefit which the permanent and regular employes of ONGC are entitled. The Industrial Tribunal has also directed the respondent ONGC to reinstate all six petitioners on their respective post as permanent and regular employees of the ONGC from the date of termination till they are reinstated with continuity of service with full back wages within three months from the date of the award is published in the Central Government Gazette or displayed on the notice board of the Tribunal. This award was challenged in this Court by way of filing Special Civil Application No. 1627 of 2001 by the respondent Corporation. After hearing the learned counsel for the parties, this Court has allowed the the said petition in part. In so far as the award relating to Mahendrasingh - petitioner no. 2 herein is concerned, was quashed and set aside and the award in respect of rest of the petitioners was modified as per the terms mentioned in the order dated 18-3-2002.

6. The contention of the learned counsel for the respondent ONGC is that the question for adjudication was referred by the Central Government on 5-10-1990 and the termination proceedings were continued before the Industrial Tribunal and this petition was filed before this Court on 13-9-1991 i.e. after about 11 months from the date 5-10-1990. However, this petition was admitted on 18-9-1991. Thereafter, the petitioners have never made any attempt to expedite the hearing of this petition nor they have raised any contention or made any submission before the Tribunal that the petition has been admitted by the High Court of Gujarat for the questions to be referred to the Tribunal and the order of the Central Government was not legal one and the proceedings were continued and accordingly the award dated 9-12-1999 was passed. As such, the dispute regarding the remaining part of the demand which has not been referred, are separate and can be adjudicated upon separately. In fact, the Central Government has referred the disputes in respect of all the three demands made by the petitioners before the Assistant Labour Commissioner. As such, it cannot be said that any part of the demands is required to be considered and referred to the Tribunal for adjudication at this stage. The dispute referred to for adjudication covers the demands no. 1 and 3. As the demand no. 2 is consequential, incidental or ancillary, the same can be decided if the petitioners were entitled to be regularized and the petitioners' services have been directed to be regularized and the petitioners were entitled for reinstatement with full back wages from

their respective date of termination. The petitioners have made request for making payment of money equivalent to their monthly basis as overtime for extra work performed by them before the Tribunal. As the Tribunal has considered all the relevant and material aspects of the matter, question with regard to referring the disputes for adjudication does not arise at all.

7. I have considered the contentions raised by the learned counsel for the parties and I have gone through the relevant material on record as well as the record of Special Civil Application No. 1627 of 2001 which was called from the office.

8. In the present case, the petitioners have raised three demands before the Regional Commissioner of Labour, Central Government, Ahmedabad. As the matter could not be resolved before the Conciliation Officer, the Assistant Labour Commissioner referred the matter to the Central Government vide order dated 30-7-1990 by making a Reference to the appropriate authority for adjudication of the disputes.

9. From the demands dated 25-6-1990, it appears that the petitioners had three demands; for regularization of their services, payment of arrears of wages and money equivalent to other benefits from the date of joining and apprehension of action of the employer in terminating the services of the petitioners, as illegal. Both these questions relates to the one and same aspect and those questions have been referred to by the Central Government for adjudication as to whether the action of the respondent ONGC in not regularizing and in terminating the services of the petitioners was justified or not. It is true that the order has not been passed by the Tribunal declaring the petitioners to be regular employees of the respondent ONGC from the date of joining. But the order has been passed to treat the petitioners as regular employees of the respondent ONGC from the date of termination. If the petitioners had any objection in that respect, the petitioners could have argued before the Tribunal as well as before this Court in Special Civil Application No. 1627 of 2001 for rest of the claims of the demands and benefits from the date of joining till the date of actual reinstatement and if they had any objection to that effect they could have raised the same before this Court in Special Civil Application No. 1627 of 2001. Hence, after availing the remedy available to them, the petitioners cannot again claim the same reliefs in this petition that the petitioners are entitled for the benefit from the date of

joining till the date of actual reinstatement. So far as the second demand i.e. all the petitioners be paid money equivalent to their monthly wages as over time for the extra work performed by them throughout the period, is also consequential, incident and ancillary relief and that could have been claimed by the petitioners before the Tribunal or before this Court in Special Civil Application No. 1627 of 2001.

10. It is is pertinent to note here that the petitioners have not challenged the findings recorded by the Tribunal in this Court by way of filing separate petition. Even the petitioners have not raised any contention or made any submission with regard to the aforesaid second demand or additional benefits from the date of joining till the date of actual reinstatement. The order passed by this Court in Spl. C.A. No. 1627 of 2001 has become final whereby the award of the Tribunal was modified and that has also not been challenged by the petitioners by way of filing Letters Patent Appeal and the same is also final and binding one to the parties.

11. In the last, the learned counsel for the petitioners submitted that the respondent no. 1 - Union of India has not filed any affidvait-in-reply nor anybody has remained present to oppose the present petition and they have not explained any reason for not referring to the part of the Reference. I have also considered this contention. But I do not find any reason to consider this aspect and hence I do not find any substance in the said contention.

12. As such, after going through the entire material on record and considering the submissions made by the learned counsel for the parties as well as relevant provisions of the Law, I am of the opinion that now nothing remains to be considered for Reference by the Central Government for adjudication to the Tribunal.

13. In view of the above discussion, I do not find any good ground for interference by this court in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India. Accordingly, this petition has no merits and the same deserves to be dismissed. Therefore, this petition is dismissed. Rule is discharged with no order as to costs.

Sd/-
(Kundan Singh, J.)
/JVSatwara/